

Application number: 09/628098

Art Unit: 3624

Applicant: Khai Hee Kwan

Examiner: Thu Thao Havan.

Title: Computer System and Method for online display, negotiation and management of loan syndication over computer network.

REMARKS

Summary.

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The Federal Circuit has stated: An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. (ATD Corp V Lydall Inc, 159 F.3d 534, 48 USPQ 2d 1321, 1328 (Fed Cir 1998) (citing In re Spada, 911 F.2d 705, 15 USPQ 2d 1655, 1657 (Fed Cir 1990); Diversitech Corp V Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ 2d 1315, 1317 (Fed Cir 1988). Our conclusion is that Herschkorn teaches a loan trading system and not a loan syndication system. The difference here has not been articulated by the examiner to show inherency whereby a loan trading system must necessarily shows loan syndication.

10 15 Applicant submits that by equating loan trading to syndicating a loan is not a reasonable interpretation consistent with the specification. See In re Morris, 127 F.3d 1048, 1054-44 USPQ2d 1023, 1027-28 (Fed Cir 1997) (Claims must be given the broadest reasonable interpretation consistent with the specification) Even if it could inherently shows a syndication being a trading system, Herschkorn has no teaching where negotiation of the conditions and terms is done by negotiation via sending comments between each entities. Crucially, Herschkorn's teaching involved trading of loans while this application concerns creating of these loans by syndication as such it would be reasonable to suggest that one skilled in the art would be able to see 'trading loans' as 'syndicating loans'. Furthermore, Herschkorn's method is where loans are traded between two parties while we claimed one with many parties in aggregate over the same loan requirements.

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The following details our claim by claim rebuttal.

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REMARKS IN DETAIL

Claim 1,21,26

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Claim 1 is the broadest claim and representatives in 21,26. In essence, this claim describes where entities wishing to form a syndicate would negotiate the terms of the syndication by sending comments about terms and conditions. Negotiation is an essential element (step) to be considered prior to the formation of a loan syndication. If the parties could not negotiate to reach an agreement as to the terms and conditions then no syndication is possible. Note that at this stage no loan has been created and Herschkorn did not teach of negotiation as his method is to match the bid and offers of one party with another party.

- 15 Our first element or step refers to receiving a request to post a requirement to syndicate a loan facility by a first entity over a network. The examiner provided Col 1, lines 5-23. These teaching collectively informed one skilled in the art of the background for Herschkorn's invention. He started by stating his invention is for loan trading and using a matching system or by auction (See background). Col 1, line 12-23 provides some background information about how loan is created by syndication invoking the words "... arrange bank loans in facilities provided by a group of banks and financial institutions, otherwise known as a syndicate. Bank loans typically consist of term loans and revolving credit facilities (also known as revolvers). " Herschkorn made no mention that this type of arrangement would involve posting a requirement to syndicate a loan facility. And while the word "arrange" is broad, it must be reasoned by the examiner to show that such arrangement would necessarily reveal posting a requirement to syndicate a loan.
- 20
- 25

The rest of the paragraph shows the type of loans ie term loan or revolving loan which are not relevant in showing that it must necessarily show posting a requirement over a

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network. It is noted that Herschkorn deals with loan that is already created or executed which can be traded as opposed to loans being created. See Col 4, line 63-67 “Bank loan information (e.g., borrower and tranche) regarding bank loans for trading are posted to potential buyers and sellers, sellers and buyers enter offers and bids, respectively, for
5 posted loans and the offers and bids are then posted to all potential buyers and sellers.” Quite simply, one cannot trade something that is yet to be created.

Our second element refers to “displaying information about said requirement accessible by a plurality of entities over a network;”. While we agree that Herschkorn shows
10 displaying some information but that does not mean this must necessarily shows a requirement to syndicate a loan opportunity . As mentioned, Herschkorn teach of a loan trading system which naturally display information about a loan (previously created or executed or agreed by various borrowers) being offered as contrast from a requirement to syndicate a loan opportunity or as the case may be where the lender wish to participate in
15 a loan syndication. The examiner provided Col 3, line 25-54 which explains trading websites of traded securities which have already been created. The examiner also relied on Fig 1,2,3 and 5 and suggested that Herschkorn disclosed loan negotiations. The applicant respectfully disagrees. Fig 1 shows matching of loans being offered (ie matching the bid to any offer). This is usually an automated system found in most trading
20 system without any room for negotiation directly with the entities and certainly a matching routine is more efficient than having to negotiate given that negotiation must necessarily means the minds of the buyer and seller have not meet on the price or terms yet. For example Herschkorn details at Col 5 line 29, “As a feature of this aspect, a match exists when bids and offers for the same loan with the same price have a common
25 possible fill amount.” This clearly shows that matching can only occur when you have same price and common possible fill amount which are NOT negotiable. Simply stated, one begins to negotiate when the price or conditions being offer are different whereas no negotiation is needed where price is same.

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Fig 2 shows the loan that is being offered (some are in parts) but again these information being displayed are not necessarily showing parties wishing to form loan by syndication. Fig 3 shows the criteria to trade a loan. This again fails to show the information necessarily for a loan to be syndicated. Fig 5 shows making an order to bid or offer again
5 referencing purchasing or selling a loan BUT not syndicating as such or negotiating to syndicate one.

As to our element “in response to said requirement, receiving offers from one or more second entities wherein said offer includes at least a comment over a network;”

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The examiner provided Col 7 lines 13-67 which details the trading system in particular Fig 1 & 2. As noted previously none of these Figs 1-3 and 5 provides for a comment to be included with said offers. For example in Fig 1, step 103 only provides for user to enter BID or OFFER which is a price. Fig 2 merely shows what loans are being offered. It is
15 well known in the art that BID or OFFER must necessarily be a numeric figure or price and not a comment. There is no suggestion by the examiner that either a BID or OFFER must necessarily be accompanied by or is a comment. Herskorn certainly has no such teaching. (See Fig 2 where no comments are found send by entities and even if there are, it is not send directly to first entity as amended now) It is logical to conclude that if a
20 comment is includes then such BID or OFFER will be conditional and hence could not be MATCHED as taught by Herschkorn. See Col 5 line 29, “As a feature of this aspect, a match exists when bids and offers for the same loan with the same price have a common possible fill amount.” It is also noted in the technical field of programming that if a
25 comment (text) is inputted into a numeric field, it will not work or will cause a ‘mismatch’ error. Noting that this element requires receiving a number of offers for the same requirement, ie multiple entities taking interest in one particular requirement in order to form a syndication while Herskorn relates to selling a loan parcel to one party. Technically, it would not be possible to offer the same loan parcel to multiple parties in the same way to create a syndication.

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Our fourth element “enabling first entity to negotiate with second entity over a network about committing at least a portion of said loan facility ; and ”. The examiner provided Col 8 line 35-67 as evidence and reasoned that “enabling negotiation by disclosing initial offers and choices for different offers”.

The applicant respectfully disagrees since disclosing initial offers and choices do not necessarily means there is negotiation. There is no evidence in the trading art using a matching routine to enable one to negotiate another price with said counter party. Firstly in a trading system, it is unlikely that one know who is the offeror and secondly, any price is provided to the system for matching and could not be negotiated between two parties. If one wants to provide another price in Herskorn then this can be provided but as an unfulfilled order waiting to be matched and not for negotiation.

For example in trading system there is a routine called depth of price as illustrated below:

Bid	Offer
10	11
9	12
8	13

In a matching routine, unless one of the party is prepare to buy at 11, then nothing can be sold BUT in negotiation as per this claimed invention, a party could send a comment to the offeror suggesting 10.6 and see if offeror is willing to accept. The offeror may respond by suggesting 10.8 and so on until both agree. However, this interactive as opposed to automatic matching is not found in Herskorn and in modern trading system.

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The examiner's evidence shows how a user can input his offer and bid in view of Fig 1 and 2. Fig 3 is where a bid or offer is initiated. However none of them shows negotiating between first entity with second entity. (See Fig 4B where it shows steps 210 and 211 where buyers and sellers enter their inputs independently to the system and not to each other in response.) There is no evidence to show disclosing initial offers and choices for different offers must necessarily shows negotiation with second entity. It is important to recognize that negotiations require a second party to participate by initiating a comment, firstly by knowing how to reach said party. Herschkorn made no mention of reaching counterparty to the trade.

Note however that Herschkorn also teach of undisclosed orders (See col 5, line 63 to col 6 line 4 and we quote "As a feature of this aspect, if no match is found for an undisclosed order, then it is determined if the undisclosed offer or undisclosed bid is within a predetermined amount of a corresponding bid or offer, and if so, the parties making the respective offer and bid are contacted to see if a match can be made.") This directly contradicts the examiner's assertion whereby disclosing offers show negotiation as Herschkorn taught undisclosed offers or bids must be matched first and provided there is no match then contacted by the system if they are within some pre-determined price range. This is in contrast to our claim element for negotiating between the two interested parties. Furthermore, the issue here is about committing and not trading or buying a loan as taught by Herschkorn. The examiner placed no record to show how trading must necessarily show committing which reflects an obligation to take a part of the loan being syndicated rather than selling or buying said loan.

The applicant provides an electronic communication channel where the entities could negotiate by sending comments (See Fig 7 of Application in comment box 610) to each other about committing (as opposed to selling/buying) at least a portion of the loan being syndicated.

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In the case of an auction (See Fig 7 of Herschkorn), there is no interaction between first entities and second entities as the bidders are bidding between themselves without interacting with first entity by sending comments. As noted Herschkorn's method provides no interaction between the entities since the trading system provides a matching
5 procedure with the bids and offers submitted. (See Fig 4B of Herschkorn)

Therefore, Herschkorn, fails to show the comment criteria as the starting point to initiate negotiation (element 4) as contacting them does not necessarily shows sending comment (element 3) by second entity in response to a published requirement (element 2) from first
10 entity.

The applicant respectfully submits that the examiner has erred in considering or asserting that trading loan must necessarily reveals negotiating and managing loan syndication. Herschkorn fails to teach a method for syndicating a loan by negotiation by including a
15 comment send over a network and enabling two different entities to negotiate over a network. Herschkorn also fails to show that the loan is pending agreement and entities are potential lenders and loan syndicators.

The applicant respectfully seek these claims to be allowed.
20

While there is a prospect the examiner might wish to raise obviousness rejection in the future, the applicant respectfully submits that while loan participation was taught by US PAT 6,920,434 filed September 28, 1998 which provides for electronic matching, it would not be obvious to one skilled in the art to consider loan syndication by negotiation
25 via comments. As stated negotiations involved submission of terms of loan subject to execution later, a process no matching could do since terms of loan has to be negotiated given the different requirements seek by different entities. As noted previously the applicant already pointed out that negotiation between bidders and offerors is patentable as seen in US PAT 6704716 by Joseph Force titled "Method and system for conducting

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an online transaction that allows the seller and bidder to *negotiate*” with filing date “September 8, 2000” which post-date our application’s filing date July 27, 2000. Even if negotiation is well known, it is not well known to do so as claimed within the subject matter of a loan syndication over a network.

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Claim 2, 24,

These claims include the anonymity element. The examiner provided Col 3, lines 4-12 and lines 59-61. We have quoted from Herschkorn as “Interdealer brokers match trades
10 between dealers only. The interdealer brokers will market bids and offers, also known as offerings, to the dealers without disclosing the name of the potential buyers and sellers until a bid and offer is matched. The interdealer brokers will market the offerings to dealers either through telephone contact or through the posting of offerings on terminals connected via a direct telephone line to the interdealer broker's computer system. The
15 interdealer broker systems do not use the Internet for transmission.” (lines 4-12) and “These systems can be broken down into dealer systems that allow users to trade only with dealers, but not with each other, cross-matching systems that allow users to trade with each other anonymously, primary market bidding systems that allow users to bid directly on new issues, and a direct issuance system that allows investors to buy securities
20 directly from the issuer. Limited information is available on most of these systems as access is limited to authorized users.” (lines 58-61)

As can be seen above, Herschkorn is describing dealer systems for loan trading where users (other than dealers) having NO access to the dealer system but nothing is shown for
25 syndicating a loan where the entities are anonymous. Furthermore while it suggests users are anonymous it does not suggest DEALERS are also anonymous. In our claimed invention ANY entities using the system can be anonymous while Herschkorn merely suggest users are anonymous because their trades are being brokered by dealers who have access to said interdealer network and not by themselves are anonymous.

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The applicant respectfully submits these claims are allowable.

Claims 3, 23 and 33.

5 This claim refers to ‘feedback routine’.

The applicant respectfully disagrees with the examiner assertion that “news” constituted a feedback. The examiner provided evidence in Col 3 lines 30-53 and we have reproduced the pertinent issues here “The only differentiation between website-based stock brokerage
10 sites lies in the amount of information to which the users have access. For example, some websites may provide current news and financial statistics, others may include historical data and others may provide analyst research reports”. The examiner provided no reasoning to inherently show that these reports, news, financial statistics, historical data are of the ‘feedback’ type nor are they of syndication data. It is clear that there is no
15 evidence to show stock brokerage sites would inherently shows syndication sites. Financial statistics, historical data usually refers to accounting data or trading details which are compiled by the stock trading system and could not be feedback from entities etc. Furthermore such data are not in terms of satisfactory or complains as feedbacks by entities using the system. See our Fig 5 &7 (see where we have included “80 satisfactory
20 feedback and 20 complains” to show the system providing feedback in terms of satisfaction/complaint by entities)

In order to provide feedback, as the term suggest one has to participate in the syndication and only then can one provide feedback in terms of complaints or satisfaction and as such
25 websites providing news and financial stats, historical data and analyst reports do not necessarily show the element of feedback by entities.

The word ‘feedback’ is generally defined as follows:

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- a. The return of a portion of the output of a process or system to the input, especially when used to maintain performance or to control a system or process.
 - b. The portion of the output so returned.
 - 5 c. Sound created when a transducer such as a microphone or electric guitar picks up sound from a speaker connected to an amplifier and regenerates it back through the amplifier.
-
- 10 1. The return of information about the result of a process or activity; an evaluative response: *asked the students for feedback on the new curriculum.*
 - 2. The process by which a system, often biological or ecological, is modulated, controlled, or changed by the product, output, or response it produces.

Source : The American Heritage® Dictionary of the English Language, Fourth Edition

Applicant respectfully ask the examiner to allow the claims.

Claim 4 , 28 and 34.

The examiner provided col 4, line 63 to col 6, line 68 and figs 6e-6f.

We respectfully disagree. Col 4 line 63 to col 6 line 68 provides a summary of Herskorn's invention with many embodiments. As taught and we quote from said "In accordance with one embodiment of the present invention, apparatus and method are provided for facilitating the trading of bank loans between buyers and sellers. Bank loan information (e.g., borrower and tranche) regarding bank loans for trading are posted to potential buyers and sellers, sellers and buyers enter offers and bids, respectively, for posted loans and the offers and bids are then posted to all potential buyers and sellers. " Fig 6e-6f only shows the flow chart of loan trading and not receiving acceptance from

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final borrower nor creating a loan. The fact that some trader bought a loan does not necessarily means a loan is created.

5 It is clear there is no evidence to show borrower accepting and creating the loan as in Herschkorn, the loan is already created, therefore one cannot logically create the same loan twice over. Since the limitation of final borrower & creating loan have not been meet, applicant respectfully ask the examiner to allow the claims.

10 Current Amendments have however deleted the above element and included a rating routine for the syndication performance of an entity. Antecedent can be found in our original claim 13 “an rating system to determine the success rate of each originator so as to provide a comparison to their ability to close a deal “. This can also be seen in Fig 5 & 7 of this application where the screen displayed “OCBC , 5 Successful Syndication , 2 Failed Attempts, 1 Aborted. Total Value USD 305 million. “ Obviously these are not
15 loan financial data as suggested earlier or historical open/close price of a trade but about syndication performance. There is no suggestion nor is it obvious for one skilled in the art to modify financial data to show ratings associated with syndication data by rating them given the subject matter is unknown. The applicant submits the claims should be allowed.

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Claim 5 and 22 and 29.

The examiner provided col 16, line 48 to col 18 line 67 , col 4 line 54-56 and col 6 lines 35-46)

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The applicant submits that while Herschkorn teaches auction and auction is old in the art, it does not suggest selecting more than one entity to form a syndicate using auction method. It is also well-known that generally auction usually have only a single winner see Ebay.com.

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Firstly selling of loan as taught by Hersckorn (see Table 6) does not necessary show placing loan commitment to form a syndication. As the applicant had mentioned, Hersckorn has only made three sentences in his entire specification mentioning syndication or syndicate and we quote “Large corporations and trusts arrange bank loans in facilities provided by a group of banks and financial institutions, otherwise known as a syndicate. “ and “A revolver provides a commitment from the syndicate for the borrower to draw upon a set amount of money until the maturity date. “ and “An administrative agent provides the processing of paperwork and movement of funds associated with a bank loan on behalf of the syndicate and the borrower. “ which by themselves are insufficient to inform one skilled in the art of using auction method to select more than one entity forming a syndication. The examiner placed no reasoning on record to show that buyers in Table 6 must necessarily form a syndicate to buy the loans. Table 6 shows buyers wish to buy loans at the average price which fulfill the total amount of the loan but they are not forming a syndicate to do so.

“In relying upon theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art.” Ex parte Levy, 17 USPQ2d 1461, 1464 (BPAI 1990).

Hence if the examiner is depending on inherency, this could not be established by mere probabilities or possibilities. (In re Robertson, 169 F.3d 743,745,49 USPQ2d 1949, 1950-51 (Fed Cir 1999).

In the state of the art of loan syndication as exemplified by US Pat 6920434 by Cossette, the participation includes a process of identifying and selecting the potential investors by relying on a search feature. (See Appeal Brief for Application 09/161787 by Cossette

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filed Sept 28, 1999 at page 9) The Applicant submits that an auction process would not be obvious in view of a search feature.

Since the limitations cited above have not been meet, applicant respectfully ask the
5 examiner to allow the claims.

Claim 6, 35, 30.

The claims show that the potential lender could also post his or her lending requirements
10 as part of the syndication process. The examiner provided col 1 lines 5-23 and col 2 lines 20-52.

While the evidence show lenders as in banks, the applicant submits that they are not
potential lenders as teach by Hersckorn. A potential lender is one that has not lend yet
15 while Hersckorn's invention is for a loan implicitly means they are lenders otherwise it could be not a loan (ie a loan is created by having a lender lending money else no loan). Furthermore, neither syndicator nor lending is mentioned in Hersckorn as technically a loan buyer is NOT a lender of the original loan.

20 Claim 8, 31, 36

The examiner provided col 13, line 35 to col 15 line 40 and col 7 lines 34-67 and figs 4b-4d and 5.

25 Col 13 line 35 to col 15 line 40 deals with unfilled portion of the loan which is not related to adapting negotiated terms. Pertinent to this is a determination method taught by Hersckorn of repeating the matching process. (See line 48-50 of Col 13) As the applicant already submitted Hersckorn's method is in matching and not in negotiating by whatever means. And it is conclusive that once a loan is made and be traded as in Hersckorn, then

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its terms cannot be adapted further as the loan is executed. This is reiterated by Hersckorn in col 15 line 20-35 where it states that the seller has to confirm that no violation of the loan document in terms of the maximum assignment of the loan. Hence with this in mind, it would be difficult to suggest one can even adapt negotiated terms to said document

5 given there is no negotiation in Hersckorn and it is impossible to adapt negotiated terms to an executed loan contract. The legal procedure is to execute a second supplementary loan contract to adapt these negotiated terms which may interfere with accrued rights of parties and beyond the scope of this rebuttal. As for col 7 lines 34-67, this shows the digested information pertinent to the loan as displayed but again nothing suggesting
10 adapting negotiated terms of loan into said facility. Figs 4b-4d shows the steps of trading and 5 repeats the confirmation page which again shows the seller agreeing that he has not violated any terms on the credit document. This clearly shows that said credit document cannot be altered or updated or amended or incorporate any conditions else why would there be a need for Hersckorn's seller to acknowledge he is NOT violating any terms if
15 terms can be amended.

The current amendments reads “ updating online electronic documents incorporating said negotiated conditions and terms before creating said loan syndicate by agreement ”.

20 The antecedent can be found at in our original claim 13 and we quote “ (original claim 13 at filing) a programmable administrative routine to monitor correspondence, update electronic documents, issue settlement instructions, accounts, perform billings, provide different degree of access to loan syndicated participants in order for them to perform their duties, calculate and determine the interest costs principal repayment for each
25 syndication on behalf of the syndicator.”

Applicant respectfully ask the examiner to allow the claims as it is clear that Hersckorn did not teach and could not update electronic documents given the inherent logic that once a loan is created it could not be altered.

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Claim 9, 32.

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The method as described in claim 1 wherein said requirement is an origination then first entity is a loan syndicator and second entity is potential lender.

The examiner provided fig 6e and 8.

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Fig 6e shows a trader either a seller or buyer entering his order into the system in order to for it to be matched. (At step 335 (FIG. 6E), the order is entered into the system and at step 336, the process for finding a match for the order begins. Inquiry 337 determines it a match exists and if so, steps 338-351 (FIGS. 6E and 6F) are carried out.) In Fig 8, this shows a reverse order input page again designed for a trader to provide details of his offer or bid. (Col 17 line 15-17) also fails to show an originator which is an entity wishing to originate (create) a loan syndicate and not merely a loan. The applicant respectfully submits that the examiner provided no reasons that one skilled in the art must necessarily reads a seller or buyer in Hersckorn to be inherently a loan syndicator and how could there be a loan origination when Hersckorn shows trading of loan already in existence.

15

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Note that the elements loan syndicator and potential lender have been bundled into claims 1,21,26.

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Claim 25.

Claim 25 includes the ratings routine and methods (except for loan syndicator and potential element) in claim 1 which we already submit are not found in Hersckorn and accordingly the applicant submits is allowable.

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In ending, the applicant appreciates the interview with the Examiner on 6 th July which helps to clarify some the issues above necessary to distinctively claimed our claimed
5 invention. If the examiner agrees there are clearly patentable subject matters found in our claimed invention but does not feel the present claims are technically adequate, applicant respectfully request the examiner writes acceptable claims in pursuant to MPEP 707.07(j).